

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

December 31, 1991
AO-91-31

Mr. Bernard B. Kavanaugh
Kavanaugh and Company
26 Essex Street
Andover, MA 01810

Re: Non-profit Corporations/Campaign Contributions

Dear Mr. Kavanaugh:

I am writing in response to your March 16, 1991, letter to Pat Carli requesting an advisory opinion regarding the legality of non-profit corporations making political contributions. I apologize for the delay in my response.

Your letter outlines your understanding of the campaign finance laws with respect to political contributions by non-profit corporations and asks two questions within that context.

First, you ask if the term "business corporation" as appearing in M.G.L. c.55, s.8 refers both to "for-profit" and "non-profit" corporations? For the purposes of this advisory opinion, the terms "business corporation" and "for-profit corporation" are used interchangeably and include those corporations set forth in section 8 of chapter 55.¹

Second, you ask if section 8 applies only to a for-profit or business corporation, is a non-profit corporation prohibited from making political contributions to candidates and political

1. This advisory opinion is limited to a discussion of non-profit corporations which may receive funds from business corporations but do not have business corporations as members, a situation discussed in AO-90-30.

committees if the non-profit corporation receives monies from a business corporation?²

1. M.G.L. c.55 - Applicability to Non-Profit Corporation

The campaign finance laws prohibit business corporations and certain other corporations from making political contributions. In pertinent part, M.G.L. c.55, s.8 provides that:

[N]o business corporation incorporated under the laws of or doing business in the commonwealth and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party.

While this section prohibits a business corporation from making such contributions, it is the long-standing opinion of this Office that section 8 does not prohibit a non-profit corporation formed under the provisions of M.G.L. c.180 from making political contributions. The ability to make political contributions is subject to various reporting requirements and may be affected if the non-profit corporation receives corporate funds as discussed below. The general reporting requirements are set forth in Interpretative Bulletin OCPF-88-01 (formerly OCPF-IB-105), a copy of which is enclosed for your information.

2. Impact of Receipt of Business Corporation Funds

It has been the long-standing opinion of this Office that M.G.L. c.55, s.8 generally prohibits a non-profit corporation which receives monies from a business corporation from making political contributions. Consistent with this opinion, the Office has noted in a number of advisory opinions that "business corporations cannot use contributions to an organization which, though not a political committee, does make incidental expenditures for campaign finance purposes as a means of making indirect corporate contributions to candidates and multi-candidate committees." See AO-86-21 and AO-87-05B. This opinion is also consistent with earlier pronouncements of

2. The issues raised by your questions do not concern direct or indirect contributions by a business corporation to a ballot question committee since a business corporation is not prohibited from making such contributions in the first instance.

the Attorney General. See Op. Atty. Gen., November 6, 1980, which noted that "If a corporation cannot directly provide facilities to a candidate or committee by virtue of the statute, it may not do so indirectly through the associations to which it belongs." Therefore, chapter 180 corporations which receive donations or contributions from business corporations may not make contributions to candidates or multi-candidate political committees.

To the general rule set forth above, the Office has recognized one exception. In both AO-86-21 and AO-87-05B the Office opined as follows:

[I]f the general treasury of [a non-profit corporation] is void of corporate monies it could make contributions, in an incidental manner, to candidates and multi-candidate committees.

AO-86-21 concerned a non-profit education corporation which sold advertisements in its newsletter to business corporations. The Office concluded that the organization could make incidental political contributions if:

[T]he accounts relative to the newsletter, and all related activities and expenses, or any other source of corporate monies, are maintained in a manner completely separate and distinct from the general treasury accounts and activities of the non-profit corporation. AO-86-21, pages 2 and 3.

A similar conclusion was enunciated in AO-87-05B concerning publication of a telephone directory by a chapter 180 corporation. See AO-87-05B, page 2.

While complete segregation of funds received from a business corporation under the circumstances noted in the referenced advisory opinion may be sufficient to permit a non-profit corporation to make incidental political contributions, there are other factors which must be considered. For example, if a business corporation makes a "charitable" donation to a chapter 180 corporation or "purchases" advertisement space in its newsletter with an understanding that the non-profit corporation will make other monies available for political contributions, M.G.L. c.55, s.8 would have been violated, even if the funds are segregated.

In each case, the critical issue is the purpose of a contribution by the business corporation and whether a business corporation, directly or indirectly, is making a political contribution to a candidate or multi-candidate committee.

In light of the seriousness of illegal corporate contributions, it is strongly recommended that a non-profit corporation which receives business corporation monies and also wishes to make incidental political contributions should seek

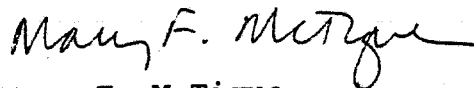
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advice from this Office regarding the specific circumstances involved.

This opinion is based solely on the representations made in your letter and the assumptions set forth in this letter. This opinion has been rendered solely in the context of M.G.L. c.55.

Please do not hesitate to contact this Office if you should have any additional questions.

Very truly yours,

A handwritten signature in cursive script, reading "Mary F. McTigue". The signature is written in dark ink and is positioned above the printed name and title.

Mary F. McTigue
Director